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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6
7 WILLIAM S. OSWALD,

8 Petitioner,

No. C 10-02089 PJH (PR)

9 vs.

ORDER TO SHOW CAUSE

10 R. GROUNDS, Warden,

11 Respondent.

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13 Petitioner, a California prisoner currently incarcerated at the Correctional Training
14 Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28
15 U.S.C. § 2254. He has paid the filing fee.

16 The petition attacks denial of parole, so venue is proper in this district, which is
17 where petitioner is confined. See 28 U.S.C. § 2241(d).

18 **BACKGROUND**

19 Petitioner was convicted of second degree murder in Los Angeles County Superior
20 Court. He was sentenced to prison for seventeen years to life. This petition is directed to a
21 denial of parole on June 5, 2008. He claims to have exhausted these claims by way of
22 state habeas petitions.

23 **DISCUSSION**

24 **A. Standard of Review**

25 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
26 custody pursuant to the judgment of a State court only on the ground that he is in custody
27 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
28 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet

1 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
2 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
3 pursuant to a judgment of a state court must “specify all the grounds for relief which are
4 available to the petitioner ... and shall set forth in summary form the facts supporting each
5 of the grounds thus specified.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.
6 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts
7 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes
8 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which
9 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*
10 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,
11 concurring).

12 **B. Legal Claims**

13 As grounds for federal habeas relief, petitioner asserts that: (1) his rights were
14 violated by the Board’s repeated denial of parole based on the facts of his offense and in
15 the face of extensive evidence of rehabilitation; and (2) there was not “some evidence” to
16 support the denial.

17 These claims are sufficient to require a response. See *Biggs v. Terhune*, 334 F.3d
18 910, 916-17 (9th Cir. 2003) (warning that repeated denial of parole based on unchanging
19 characteristics of offense might violate due process); *McQuillion v. Duncan*, 306 F.3d 895,
20 904 (9th Cir. 2002) (due process requires that at least “some evidence” support parole
21 denial).

22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

24 1. The clerk shall serve by certified mail a copy of this order and the petition and all
25 attachments thereto on respondent and respondent’s attorney, the Attorney General of the
26 State of California. The clerk also shall serve a copy of this order on petitioner.
27 2. Respondent shall file with the court and serve on petitioner, within sixty days of
28 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules

1 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
2 granted. Respondent shall file with the answer and serve on petitioner a copy of all
3 portions of the state trial record that have been transcribed previously and that are relevant
4 to a determination of the issues presented by the petition.

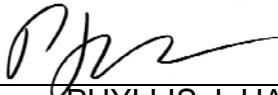
5 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
6 the court and serving it on respondent within thirty days of his receipt of the answer.

7 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
8 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
9 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court
10 and serve on respondent an opposition or statement of non-opposition within thirty days of
11 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
12 within fifteen days of receipt of any opposition.

13 4. Petitioner is reminded that all communications with the court must be served on
14 respondent by mailing a true copy of the document to respondent's counsel. Petitioner
15 must keep the court informed of any change of address and must comply with the court's
16 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
17 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*
18 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

19 **IT IS SO ORDERED.**

20 Dated: July 9, 2010.



21 PHYLLIS J. HAMILTON
United States District Judge

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